

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 23 & 43-80:

UNITED FOOD AND COMMERCIAL  
WORKERS, LOCAL NO. 684,

Complainant,

- vs -

FINAL ORDER

COONEY CONVALESCENT HOME,  
LEWIS AND CLARK COUNTY,  
MONTANA,

Defendant.

\*\*\*\*\*

No exceptions having been filed, pursuant to ARM 24.26.215,  
to the Findings of Fact, Conclusions of Law and Recommended  
Order issued on April 16, 1981;

THEREFORE, this Board adopts that Recommended Order in this  
matter as its FINAL ORDER.

DATED this 15th day of May, 1981:

BOARD OF PERSONNEL APPEALS

By John Kelly Adkins  
John Kelly Adkins  
Chairman

\*\*\*\*\*

CERTIFICATE OF MAILING

The undersigned does certify that a true and correct copy  
of this document was mailed to the following on the 21 day  
of May, 1981:

United Food and Commercial Workers  
Local No. 684  
P.O. Box 873  
Helena, MT 59624

John P. Adkins, Deputy  
Lewis and Clark County Attorney  
Lewis and Clark County Courthouse  
Helena, MT 59601

Jennifer Jackson

STATE OF MONTANA

BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 23 & 43-001

UNITED FOOD AND COMMERCIAL  
WORKERS, LOCAL NO. 684,

Complainant,

vs.

COONEY CONVALESCENT HOME,  
LEWIS AND CLARK COUNTY,  
MONTANA,

Defendant.

FINDINGS OF FACT,  
CONCLUSION OF LAW  
AND RECOMMENDED  
ORDER

\*\*\*\*\*

I. INTRODUCTION

On June 16, 1980 Complainant filed an unfair labor practice charge against Defendant alleging it had violated 39-31-401(1) MCA by interfering, restraining or coercing certain employees represented by the union at Cooney Convalescent Home. Defendant's motion for a more definite statement, pursuant to 39-31-405 MCA and ARM 24.26.581, made on June 27, 1980 was granted. Complainant filed a more definite statement on July 30, 1980. On December 11, 1980 Complainant filed another unfair labor practice charge against the County alleging violations of 39-31-401(1) and (4) MCA when the Deputy County Attorney interviewed or attempted to interview Complainant's witnesses. Defendant filed answers in which all allegations were denied. Both charges were combined for convenience of this Board. A hearing was held on February 2, 1981 under authority of 39-31-406 MCA and pursuant to ARM 24.26.212, 24.26.215 and 24.26.682 et seq. Complainant was represented by Kathy Van Hook, Defendant by John P. Atkins.

II. ISSUES

1. The issue raised in ULP 23-80 is whether the employer's conduct constitutes a violation of 39-31-401 (1) MCA. Under this charge the union listed ten different counts under which it alleged

1 the employer had interfered with, restrained or coerced certain  
2 employees. Those are summarized as follows:

- 3 a. Inquiring about union meetings.
- 4 b. Intimidation of an employee who wanted to call the  
5 union.
- 6 c. Delay in allowing an employee to call union representative.
- 7 d. Not allowing certain employees to talk about the union  
8 at work.
- 9 e. Not allowing certain employees to talk because it might  
10 be thought they were talking union.
- 11 f. Not allowing a certain employee to talk to nurse's aides  
12 at all.
- 13 g. Not allowing a certain employee to talk about the union.
- 14 h. Stating to an employee "we are going to crucify you."
- 15 i. Stating to an employee "you can talk but don't talk  
16 union."
- 17 j. Stating that a certain employee was a shop steward and  
18 directing her to put chairs away.

19  
20 2. In ULP43-80 the question is whether the employer violated  
21 39-31-401(1) or (4) MCA when its attorney interviewed or attempted  
22 to interview certain employees who had been previously identified  
23 as prospective witnesses for the charging party in ULP 23-80.  
24

25 I took under advisement a motion from the employer to dismiss  
26 count No. 10 (j. above) in ULP 23-80 on the basis that it occurred  
27 after the first charge was filed. That motion is hereby denied.  
28 If proved, it would tend to show the continuing conduct of the  
29 employer which complaint alleges as the basis for this charge.  
30

31 III. FINDINGS OF FACT

32 Based on the evidence on the record, including the sworn

1 testimony of witnesses, I find as follows:

2 1. Complainant is the certified exclusive representative  
3 for the non-supervisory, non-management employees employed by  
4 Lewis and Clark County Cooney Convalescent Home, a public employer.

5 2. On or about January 10, February 4 and March 13, 1980  
6 Joan Lester, the Charge Nurse at the Home and a supervisory person,  
7 asked Sally Pankratz, who is a member of the bargaining unit,  
8 about the union meeting and the turn out for it. She did so  
9 because some of the people in the bargaining unit had been inquir-  
10 ing of her about the union and because Pankratz had, on several  
11 occasions, complained to her about being the person (Pankratz) to  
12 whom all union activity questions were directed.

13 3. On or about February 28, 1980 Belinda Graf, a bargaining  
14 unit employee, received a warning letter from the administrator of  
15 the facility. During a coffee break she went from the second  
16 floor to the first floor to make a telephone call to the union.  
17 When she came down she talked to Sally Pankratz in the hall and  
18 was seen doing so by Joan Lester. When Belinda and Sally went  
19 into a patient's room to use the telephone, Lester followed them  
20 in and told them they could not use a patient phone to make their  
21 calls. She advised them that they could use other phones in the  
22 building, but not those of the patients. Graf returned to her  
23 duties without calling the union. Pankratz proceeded to tell  
24 Lester that she had nothing to do with the incident, where upon  
25 Lester replied that if she had nothing to do with it, why did she  
26 instigate things like that. She further advised Pankratz to just  
27 do her job and stay out of it. Graf had left the second floor  
28 without telling anyone which was contrary to common practice in  
29 the Home to cover emergency situations. Graf was not threatened  
30 by Lester.

31 4. During mid-March of 1980 the administrator held a discipl-  
32 inary meeting for Sally Pankratz in his office, among others who

1 were present at different times during the course of the meeting,  
2 in addition to Pakratz and the administrator, was Mrs. Ashley,  
3 Director of Nursing Service. Pankratz stated that she had a right  
4 to have a union representative present during the meeting, the  
5 administrator said she did, Pankratz continued to talk as the  
6 administrator pointed to the telephone. Pankratz continued to  
7 talk as other employees were called in from time to time; when the  
8 discussion became heated, Pankratz again stated that she wanted to  
9 call the union, she was then handed the telephone by the administra-  
10 tor.

11 5. The policy of the Home, with respect to labor relations,  
12 is governed by the collective bargaining agreement between it and  
13 Complainant. There is no policy, informal or otherwise, which  
14 prohibits employees from using the telephone to call the union  
15 during a disciplinary hearing. Nor is there a policy which prohibits  
16 employees from talking about the union unless it interferes with  
17 their work.

18 6. Doris Kautz is a former supervisor at the Home. She  
19 told some of the bargaining unit members not to talk about the  
20 union around her, that she did not want to hear anything about the  
21 union. The administrator had told her that she was not to become  
22 involved in the union and was not to talk about it.

23 7. On or about May 14, 1980 Sally Pankratz and Vi Betts,  
24 both bargaining unit members, were found talking in the T.V. room  
25 by Joan Lester. Neither was on coffee break. Lester told them  
26 that for their own good they should do their work and stop talking.  
27 She said nothing about the union.

28 8. On or about May 18, 1980 Kautz told Betts she did not  
29 want her talking about anything. She did so because it was inter-  
30 fering with her, Betts', work. Kautz had been advised by the  
31 Director of Nursing Service that she could prohibit such conduct,  
32 if it interfered with work.

1 9. On or about June 3, 1980 Kautz told Clara Strait that  
2 they could talk about the union but not in her presence.

3 10. At a pre-hearing meeting on July 11, 1980 Leonard York,  
4 labor relations consultant to Defendant, told Pankratz, "we are  
5 going to crucify you here today, Sally." The meeting was about a  
6 warning letter Pankratz had received on June 3, 1980. Among  
7 others, the union representative was present at the time. York's  
8 statement was not intended to threaten Pankratz and she has felt  
9 no reluctance to participate in union activities since.

10 11. On or about June 4, 1980 Lester said to Betts as she was  
11 getting off the elevator, "don't talk about the union." Lester was  
12 not antagonistic toward Pankratz' union activities.

13 12. On or about July 3, 1980 Betts was told by Kautz to put  
14 some chairs away which had been used for a union meeting. The  
15 practice had been that union members put the chairs in their  
16 proper place after the meeting was held. Kautz told Betts that  
17 she, Betts, was a shop steward. There are no shop stewards at the  
18 home and this fact was known to all involved, including the Director  
19 of Nursing service, except Kautz.

20 13. During the month of December 1980 after a pre-hearing  
21 conference was held in this matter at which prospective witnesses  
22 were identified, the Deputy County Attorney went to the Home and  
23 interviewed two of Complainant's witnesses. No threats were made  
24 and no effort was made to conceal his purpose.

#### 25 26 IV. DISCUSSION

27 The first charge filed in this matter alleged several actions  
28 by the employer which complainant contends are in violation of  
29 employee rights under the Collective Bargaining for Public Employees  
30 Act. Specially, 39-31-401(1) MCA, which the union says was violated,  
31 makes it an unfair labor practice for a public employer to interfere  
32 with, restrain or coerce employees in the exercise of their rights,

1 under 39-31-201 MCA, to self-organization, to form, join, or  
2 assist any labor organization, to bargain collectively through  
3 representatives of their own choosing on questions of wages,  
4 hours, fringe benefits, and other conditions of employment. The  
5 allegation in this first charge is not that the particularized  
6 protections of 39-31-401(2), (3), (4) or (5) MCA have been violated  
7 but rather that there has been an independent violation of  
8 39-31-401(1) MCA. In such cases the National Labor Relations  
9 Board has attempted to strike a balance between the interests of  
10 the employer and those of the employees. Because of the similarity  
11 of the Montana Collective Bargaining for Public Employees Act and  
12 the National Labor Relations Act, the Board of Personnel Appeals  
13 has been guided by NLRB precedent. The Montana Supreme Court, in  
14 State Department of Highways v. Public Employees Craft Council,  
15 165 Mont. 349, 87 LRM 2101 (1974), held that private sector  
16 precedent is relevant in interpreting the Montana collective  
17 bargaining law when its language and that of the NLRA are similar.  
18 With respect to the sections with which we are concerned in this  
19 first charge, they are identical.

20 In attempting to deal with the ten separate counts listed  
21 under the first charge it would seem that some should be dismissed  
22 on the grounds that Complainant failed to carry its burden of  
23 proof. Therefore, because the substantial evidence on the record  
24 does not support the charge, I must conclude as follows:

25 1. Belinda Graf's protected rights under the act were not  
26 violated by Defendant when Joan Lester told her she could not use  
27 the patient's telephone.

28 2. Sally Pankratz' rights were not violated by the admini-  
29 strator during the March 1980 disciplinary meeting because he  
30 offered to let her call the union. Her propensity to talk was the  
31 reason for the delay.

32 3. With respect to items d, e, f, g and i shown above under

1 WLP 23-80, not only did Complainant fail to prove by a preponder-  
2 ance of the evidence that such conduct was engaged in by Defendant,  
3 it failed to show any interference, restraint or coercion of  
4 employee rights which might have followed from such alleged conduct.  
5 The only uncontroverted testimony on the subject is that of Defen-  
6 dant's administrator and other supervisory personnel to the effect  
7 that employees could talk about whatever they wished, as long as  
8 it did not interfere with their work. Such seems a reasonable  
9 policy.

10 The proposition urged by Complainant that Defendant interfered  
11 with employee rights under the Act when one of its supervisory  
12 personnel inquired about the union meetings must fail also.  
13 Again, there was no showing that any harm resulted from the inquiry  
14 and there appeared to have been questions from employees to the  
15 supervisor regarding the meetings. To ask if a meeting was well-  
16 attended does not constitute an interference with union activities.  
17 This inquiry was sufficiently isolated so that it may not be  
18 construed to amount to an unfair labor practice. West Texas  
19 Equipment Co., 142 NLRB 1358, 53 LRRM 1249 (1963); Diechbroder  
20 Express, Inc., 168 NLRB 113, 67 LRRM 1081 (1967); Blue Flash  
21 Express, Inc., 109 NLRB 591, 34 LRRM 1394 (1954).

22 Complainant's assertion that York's statement to Pankratz  
23 interfered with her protected rights are completely controverted  
24 by her testimony that she has felt no reluctance to participate in  
25 union activities since.

26 The one remaining count under the first charge is that Vi  
27 Betts was called a shop steward and told to put chairs away.  
28 Clearly, as an employee she could be told to replace the chairs  
29 and, just as clearly, being called a shop steward does not carry  
30 its own indicia of harm. I fail to see complainant's connection  
31 here.

32 Finally, while dealing with WLP 23-80, I must consider the



1 totality of the employer's conduct in this matter and decide if  
2 the employer violated employee rights under 39-31-401(1) MCA.  
3 Taken together, if all ten counts under the charge had been proved,  
4 I must conclude complainant would still have fallen short of  
5 convincing me that an unfair labor practice was committed. There  
6 was no showing that concerted activities had been affected in the  
7 least. Typically these kind of charges (8(a)(1) of the NLRA)  
8 involve things such as discharge or discipline for engaging or  
9 attempting to engage in protected concerted activity; they do not  
10 involve insignificant assertions which, even if proved, amount to  
11 nothing more than bickering between employees and supervisors.

12 The second charge brought by Complainant was that Defendant  
13 violated 39-31-401 (1) and (4) MCA when the Deputy County Attorney  
14 went to Cooney to interview prospective witnesses at their job  
15 site. Section 39-31-401(4) MCA prohibits the discharge of or  
16 discrimination against an employee because he has signed or filed  
17 an affidavit, petition or complaint or given any information or  
18 testimony under the Act. There is no evidence on the record to  
19 prove that any of the subject employees were discharged or discrim-  
20 inated against. For that reason the 401 (4) charge must be dismissed.  
21 The NLRB has held that an employer has a legitimate purpose in  
22 interrogating employees when the information sought relates to an  
23 unfair labor practice proceeding against the employer. Despite  
24 the inherent danger of coercion the NLRB permits a limited privi-  
25 lege in the investigation of facts concerning issues raised in a  
26 complaint. *Johnnie's Poultry Co.*, 146 NLRB 770, 55 LRRM 1403  
27 (1964), 59 LRRM 2117 (CA8, 1965). There is no evidence on the  
28 record to show that the employer did not comply with the safeguards  
29 identified by the NLRB in *Johnnie's Poultry*, *supra*. There was  
30 nothing in the record to show that the employer's attorney went  
31 beyond the necessities of preparing his case for hearing; that he  
32 inquired into matters of union membership; that he discussed union

1 activities; that he dissuaded employees from joining or remaining  
2 as members of the union; or that he otherwise interfered with  
3 their rights. In the matter of May Department Stores, Co., 70  
4 NLRB 94, 18 LRRM 1338; NLRB v. Joy Silk Mills, Inc., 27 LRRM 2012  
5 (1950).

6  
7 V. CONCLUSION OF LAW

8 Defendant Cooney Convalescent Home, Lewis and Clark County,  
9 did not violate 39-31-401(1) or (4) MCA by any of the actions  
10 alleged in the complaints filed in ULP 23 or 43-79.

11  
12 VI. RECOMMENDED ORDER

13 That ULP 23-80 and ULP 43-80 be dismissed.

14  
15 VII. NOTICE

16 Exceptions to these Findings of Fact, Conclusion of Law and  
17 Recommended Order may be filed within twenty days of service of  
18 thereof. If no exceptions are filed, the Recommended Order shall  
19 become the Final Order of the Board of Personnel Appeals. Address  
20 exceptions to: Board of Personnel Appeals, Capitol Station, Helena,  
21 Montana 59601.

22  
23 Dated this 16th day of April, 1981.

24  
25  
26 BOARD PERSONNEL APPEALS

27  
28 By   
29 JACK H. CALHOUN  
30 Hearing Examiner

31 CERTIFICATE OF MAILING

32 The undersigned does certify that a true and correct copy of